# COMMISSION DECISION

## of 25 November 1999

## concerning an aid scheme implemented by Portugal with a view to reducing the debt burden of intensive stock farms and assisting recovery in the pig-farming sector

*(notified under document number C(1999) 4861)*

**(Only the Portuguese text is authentic)**

(2000/200/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having regard to Council Regulation (EEC) No 2759/75 of 29 October 1975 on the common organisation of the market in pigmeat [1] and Council Regulation (EEC) No 2777/75 of 24 October 1975 on the common organisation in poultrymeat [2], as last amended by Regulations (EC) No 3290/94 [3] and (EC) No 2916/95 [4], and in particular Articles 21 and 19 thereof,

Having called on interested parties to submit their comments [5],

Whereas:

I

### *Procedure*

(1) Decree-Law No 146/94 of 24 May 1994 includes, in Chapter I, a credit line for reducing the debt burden of intensive stock farms and, in Chapter II, a credit line for assisting recovery in the pig-farming sector. The Decree-Law was published in the Portuguese Official Gazette [6].

(2) On 26 November 1996, since it had received no notice of the State aid from the Portuguese authorities, the Commission sent Portugal a letter pursuant to Article 88(3) of the Treaty, asking it to confirm, within 15 working days, the existence of the aid, its entry into force, any budgetary implications it might have and details of one of the credit lines. By letter of 23 December 1996 the Portuguese authorities gave confirmation of the existence of Decree-Law No 146/94 on State aid in the form of credit lines for reducing the debt burden of firms of intensive stock farms and assisting recovery in the pig-farming sector. The measures were accordingly entered, under NN 65/97, in the register of unnotified State aids.

(3) By letter of 23 May 1997, recorded as received on 27 May 1997, the Portuguese Permanent Representation sent the Commission the information it had requested in its letters of 26 November 1996 and 5 May 1997.

(4) By letter of 10 October 1997 the Commission notified Portugal of its decision to initiate proceedings under Article 88(2) of the Treaty against the aids in question. In the letter, the Commission also gave notice to Portugal to submit its comments within one month of the date of the letter.

(5) The Commission's Decision to initiate the proceedings provided for in Article 88(2) of the Treaty was published in the *Official Journal of the European Communities* [7]. The Commission invited the other Member States and other interested parties to submit their comments on the aids in question within one month of the publication of the Decision in the *Official Journal of the European Communities*.

(6) Portugal submitted its comments by letter dated 13 January 1998.

(7) The Commission did not receive any comments from other interested parties.

[1] OJ L 282, 1.11.1975, p. 1.
[2] OJ L 282, 1.11.1975, p. 77.
[3] OJ L 349, 31.12.1994, p. 105.
[4] OJ L 305, 19.12.1995, p. 49.
[5] OJ C 83, 18.3.1998, p. 5.
[6] *Diário da República*, Series I-A, No 120 of 24 May 1994.
[7] See footnote 5.

II

*Description of the aids*

(8) The purpose of Decree-Law No 146/94 of 24 May 1994 is to overcome what are regarded as grave structural difficulties in the pig and poultry sector, a sector which does not qualify under operational programmes co-financed by the EAGGF Guidance Section. The Decree-Law introduces two measures: a credit line (available to pig-, poultry- and rabbit-farmers) and a credit line (available only in respect of pig-breeding and fattening in closed circuit).

**Credit line for reducing the debt burden in the intensive stock-farming sector**

(9) The objectives of the credit line for reducing the debt burden in the intensive stock-farming sector were as follows:

— to enable beneficiaries to renegotiate their stock-farming related debts towards credit institutions where there was proof that such debts were connected with investments in modern facilities, animal health and environmental protection that had taken place between 1 January 1985 and 31 December 1993,

— to make available to those beneficiaries resources for the settlement of unpaid debts towards suppliers of capital goods, debts which had fallen due between 1 January 1992 and 31 December 1993.

(10) The aid was granted in the form of an interest-rate subsidy for bank loans. The loans were for a period of up to five years and were repayable annually from the second year onwards. The interest-rate subsidy changes annually and is degressive from the first year onwards (first year 60%, second year 45%, third year 30%). From the fourth year onwards the interest-rate subsidy ceases to apply to the loans. The subsidy was calculated in relation to the reference rate of 13% specified in Decree-Law No 359/89 of 18 November 1989 ([8]).

(11) There was a limit of PTE 28 billion on the overall amount of the loans.

**Credit line for assisting recovery in the pig-farming sector**

(12) The purpose of this credit line is to provide pig farms with financial resources for the acquisition of inputs (intermediate consumption).

(13) The aid was granted in the form of an interest-rate subsidy for bank loans. The loans were for a period of up to four years and were repayable annually. The interest-rate subsidy, expressed as a percentage of the interest rate applicable under the contract concerned, varied from year to year and was degressive from the first year onwards (first year 10%, second year 8%, third year 6% and fourth year 4%).

(14) There was a limit of PTE 7,632 billion on the overall amount of the loans.

III

*Reasons for initiating proceedings under Article 88(2) of the Treaty*

(15) The reasons which prompted the Commission's decision to initiate proceedings under Article 88(2) of the Treaty can be summed up as follows.

(16) The Commission took the view that the credit line for reducing the debt burden in the intensive stock-farming sector did not, in the light of the Community guidelines applicable at the time ([9]), satisfy the requirements for being regarded as aid for rescuing or restructuring firms in difficulty. By virtue of point 2.2 of the said guidelines, Member States may continue to apply special Commission rules for these types of aid in the agricultural sector.

(17) Complying with the special rules for the restructuring of firms in the agricultural sector means fulfilling three requirements: the aid must relate to investment already carried out; the aid (possibly combined with earlier aid in the case of these investments) must not exceed a certain rate and the firms must offer certain guarantees in terms of viability and be in danger of bankruptcy.

(18) The Commission took the view that the credit line granted by Portugal satisfied the first of these requirements but not the other two.

([8]) The national reference rate is currently 8%.

([9]) OJ C 368, 23.12.1994, p. 12.

(19) The Commission felt that, since the credit line for assisting recovery in the pig-farming sector was intended for the acquisition of inputs, it concerned not investments but short-term loans (*crédits de gestion*). The measure in question did not satisfy the principal requirement applicable by virtue of Community practice, namely that it should have a maximum duration of one year.

IV

***Arguments put forward by Portugal***

(20) By letter of 13 January 1998 the Portuguese Government submitted its comments on the measures described under Section III.

(21) Commenting generally, the Portuguese authorities stated that the aids in question were Portugal's only measure in favour of intensive stock-farming, a sector which was experiencing major difficulties as a consequence above all of three factors:

— the early opening up of agricultural frontiers, with sharp falls in prices brought about by the unrelenting pressure of imports,

— high interest rates charged by banks, especially where borrowers belonged to the farming sector,

— high feed prices as a result of drought (and, consequently, a poor harvest) in 1993 and Portugal's geographical remoteness in relation to the other Member States.

The Portuguese authorities added that, in spite of the aid, the market situation for intensive stock-farming had failed to improve. From 1993 Portugal moved from self-sufficiency to being a net importer of 20% of its domestic requirements in that sector.

**Credit line for reducing the debt burden in the intensive stock-farming sector**

(22) The Portuguese authorities underlined the fact that the Commission recognised 'that the amount of the aid is below the maximum rates normally allowed by the Commission (…)'. In this respect, the Portuguese authorities stated that the meaning of 'the Commission took into consideration, however, that since it was established *a posteriori* that the upper limits had been exceeded, those limits had not been complied with when the aid was granted' was not clear. According to the Portuguese authorities, the Commission was raising the formal question of the precise moment when non-compliance with the limits was recorded, as opposed to the basic question of compliance with the maximum amounts.

(23) The Commission concluded that the aid scheme did not comply with the sectoral limits under Council Regulation (EC) No 950/97 ([10]). According to the Portuguese authorities, the Commission appeared to be applying to the aid scheme for agricultural holdings the sectoral limits specified in that Regulation, on the grounds that those limits were part of the agricultural structures policy. This requirement was not, however, part of the guidelines and, as the Portuguese authorities saw it, was not applicable.

(24) With regard to the viability of the firms, the Portuguese authorities pointed out that the Commission criteria referred to viability only, without specifying whether this meant economic or financial viability. The said authorities further took the view that it could not be assumed that the banks' scrutiny would be limited to an examination of the financial situation of the firm.

**Credit line for assisting recovery in the pig-farming sector**

(25) The Commission did not receive any comment from the Portuguese authorities regarding this measure.

V

***Assessment of the aids***

**Applicability of Article 87(1) of the Treaty**

(26) Under Article 21 of Regulation (EEC) No 2759/75 and Article 19 of Regulation (EEC) No 2777/75, Articles 92 to 94 (now Articles 87 to 89) of the Treaty apply to the production of, and trade in, the products referred to in Article 1(1) of those Regulations.

([10]) OJ L 142, 2.6.1997, p. 1.

(27) Under Article 87(1) any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is incompatible with the common market.

(28) The Community produces 22,31 million tonnes of meat and other products derived from pigs, poultry and rabbits ([11]). Portugal's production is 0,54 million tonnes. There is an appreciable amount of trade in these products between Portugal and the rest of the Community: in 1997 Portugal's imports and exports of these products totalled 75 900 tonnes and 4 100 tonnes respectively. In terms of value the exports were worth EUR 6,0 million and the imports EUR 160,5 million.

(29) The measures in question are therefore likely to affect trade in pig and poultry products between Member States since the aid favours operators in one Member State and not in the others. The measures have a direct and immediate effect on the production costs of intensive stock farms in Portugal. Consequently they give these farms an economic advantage denied to farms in other Member States which do not have access to such aids. They accordingly distort, or threaten to distort, competition.

(30) In the light of the above the measures must be regarded as State aids covered by Article 87(1).

**Possible derogations under Article 97 of the Treaty**

(31) It is possible to derogate from the principle of incompatibility laid down in Article 87(1).

(32) The exceptions to that incompatibility, which are set out in Article 87(2), are manifestly not applicable in this case, however, and were not invoked by the Portuguese authorities.

(33) The derogations provided for in Article 87(3) must be strictly interpreted when regional or sectoral aid programmes or individual instances of the application of general aid schemes are examined. They can be granted only where the Commission can establish that the aid is necessary for the achievement of one of the objectives concerned. To grant those derogations to aid not fulfilling that condition would be to permit distortion of trade between Member States, and of competition, without any justification as regards the Community interest and, at the same time, to permit undue advantage to operators in certain Member States.

(34) By virtue of Article 87(3)(c), aid may be regarded as compatible with the common market if it is intended to facilitate the development of certain economic activities or of certain economic areas and does not adversely affect trading conditions to an extent contrary to the common interest.

(35) It is in the light of that provision that the aid must be assessed.

**Credit line for reducing the debt burden in the intensive stock-farming sector**

(36) The Commission first of all examined whether the credit line was in conformity with the Community guidelines on State aid for rescuing and restructuring firms in difficulty ([12]) which were in force when the aids were granted and at the beginning of the procedure provided for in Article 88(2). The guidelines were, however, amended when new Community guidelines ([13]) came into force on 1 January 1998. In the interests of legal certainty the assessment of the measure is, for the purposes of a final decision, based on the rules in force when the procedure under Article 88(2) was initiated.

(37) By virtue of Point 2.2 of the 1994 guidelines, Member States may request that the special rules for this type of aid be applied to the agricultural sector. Portugal did not inform the Commission of the rules it wished to see applied as regards scrutiny of the measures.

(38) The Commission's scrutiny must accordingly cover all aspects of the guidelines, in particular rescue and restructuring aid and the special rules applicable to the agricultural sector.

(39) Rescue aid must:

— consist of liquidity help in the form of loan guarantees or loans bearing normal commercial interest rates,

([11]) *Source*: Eurostat (1997).

([12]) See footnote 9.

([13]) OJ C 283, 19.9.1997, p. 2.

— be restricted to the amount needed to keep a firm in business (for example, covering wage and salary costs and routine supplies),

— be paid only for the time needed (generally not exceeding six months) to devise the necessary and feasible recovery plan,

— be warranted on the grounds of serious social difficulties and have no undue adverse effects on the industrial situation in other Member States.

(40) The Commission is not in possession of the information needed to verify compliance with the second and fourth indents of recital 39. In its opinion, however, the aid does not satisfy the remaining criteria.

(41) In the case of the requirement set out in the first indent the minimum subsidised interest rate (40 % x 13 % = 5,2 %) is well below the Community reference rate applicable to Portugal in 1994 (15,33 %, i.e. the interest rate for regional aid [14]). Moreover, the duration of the aid (the subsidy is payable for three years) is well in excess of the normal six-month period applicable under Community rules.

(42) In the light of the above, the credit line in question does not meet the Community requirements applicable to aid for rescuing firms in difficulty.

(43) The Commission is of the opinion that the general rules governing aid for the restructuring of firms in difficulty do not apply to the case at hand because they call for the drawing up and implementation of a plan for the restructuring of the recipient firms. The strict requirements which the said plan must feature as regards restoring viability, in particular a reduction in capacity in sectors where there is overcapacity, and appreciable contribution on the part of the recipients of the aid to the restructuring effort, and the elimination of adverse effects on competitors, were not taken into account by the Portuguese authorities.

(44) In no case do the legislative provisions scrutinised specify the drawing up, for each firm, of restructuring plans, plans which must include measures likely to lead to viability in the long term. Similarly, although the sector concerned suffers from structural overcapacity at Community level, no measure appears to have been adopted with a view to reducing capacity. Moreover, at no stage in the proceedings did the Portuguese authorities request that the measures be scrutinised in the light of the general rules governing aid for the restructuring of firms in difficulty.

(45) The Commission then examined the aids in the light of the special rules, set out at 2.2 of the 1994 guidelines, applicable to the restructuring of firms in difficulty in the agricultural sector, this being the Commission practice in the case of such aid in the sector concerned [15]. The purpose of the rules in question is to ensure that the only agricultural holdings or firms which receive aid for restructuring are those which, are in principle viable but which, by virtue of the implementation of a measure intended to bring about a permanent improvement in agricultural structures (investment), are facing financial difficulties as a result of factors that are external to the firm.

(46) The special rules are as follows:

— the aid must concern loans taken out to finance investments already made,

— the aggregate grant equivalent of any aid awarded when the loans were taken out, plus the new aid, may not exceed the rates generally allowed by the Commission, namely 35 % (75 % in the case of less-favoured areas within the meaning of Article 21(2) of Regulation (EC) No 950/97) in the case of investment in primary agricultural production, and 55 % (75 % in the case of Objective 1 areas) for investment in the processing and marketing of agricultural products complying with the sectoral limits laid down by the Commission. At present the sectoral limits are those specified in the guidelines for State aid in connection with investments in the processing and marketing of agricultural products [16],

— the aid must be granted in response to adjustments to the interest rates on new loans, made to take account of changes in the cost of money, the amount of the aid must be less than or equal to the change in the rates or the new loans, or must concern farms that offer viability guarantees, in particular in cases where the financial burdens resulting from existing borrowings are such that the farms are at risk, possibly of bankruptcy.

[14] OJ C 74, 10.3.1998, p. 9.

[15] Precedents: N 904/95, N 21/96, N 864/96 and N 813/97.

[16] OJ C 29, 2.2.1996, p. 4.

(47) Regarding the requirement set out in the first indent of recital 46, access to the credit line was restricted to firms which had taken out loans in connection with their economic activities and with investment taking place over a given period, in order to cover financial costs deriving therefrom. The investment relates to the modernisation of facilities, animal health and environmental health protection. The Commission therefore takes the view that this requirement was satisfied.

(48) Turning now to the requirement set out in the second indent of recital 46 the Member State must be able to demonstrate that the combined effect of the restructuring aid granted and any investment aid previously granted does not exceed the maximum rates applicable (35% normally and 75% in the case of less-favoured farming areas). Since the credit line was restricted to agricultural production firms the maximum rates for processing firms are not applicable.

(49) Concerning the intensity of the aid granted in connection with this credit line it should be recalled that the national aid is in the form of an interest-rate subsidy. According to the method normally used by the Commission the net grant equivalent of the interest-rate subsidy available under Decree-Law No 146/94 is 21,8%, based on the current value of the difference between the interest rates actually applied and what is regarded as the reference market rate. In order to calculate the grant equivalent, the Commission took into account not only the interest-rate subsidy in relation to the reference rate of 13% used by the Portuguese authorities, but also the difference between this rate and the Community reference rate (interest rate for regional aid) applicable in Portugal when the aid was granted: 15,33%.

(50) When, at the beginning of the proceedings under Article 88(2), the Commission stated that the aid was less than the maximum rates it normally allowed, it was referring solely to the aid element of the credit line and not to the aggregate of the aid element of the credit line and any investment aid received earlier, which must be less than 35% of the total cost (75% in the case of less-favoured farming areas).

(51) The Portuguese authorities pointed out that an analysis had shown that all of the aid approved in the context of the credit line complied with the maximum aggregate grant equivalent of 75% in less-favoured farming areas and that 87% of the aid approved in connection with the credit line complied with the maximum aggregate grant equivalent of 35% in farming areas other than less-favoured farming areas.

(52) Since the Portuguese authorities did not indicate on what basis the analysis had been carried out, the Commission does not have the information needed to assess the representativeness and extent of the infringement of that rule. It notes, however, that according to information provided by the Portuguese authorities themselves, the limits were not complied with in 13% of the cases involving farming areas other than less-favoured farming areas.

(53) Accordingly, as the Commission sees it, if an *ex post* analysis is needed to verify compliance with this limit it must be concluded that the limit was not a criterion for approving the aid and, when the measure was implemented, the limit was not complied with in 13% of the approved cases in farming areas other than less-favoured farming areas.

(54) The Commission accepted, however, the argument put forward by the Portuguese authorities to the effect that, when they were in force, the special rules applicable to the restructuring of firms operating in the sector of primary agricultural production did not normally take into account the sectoral limits on investment under Regulation (EC) No 950/97.

(55) In the light of the foregoing the Commission takes the view that the requirement set out in the second indent of recital 46 has not been satisfied in the cases where the aggregate grant equivalent of the investment aid received and the credit line exceeded the maximum amount the recipients could legitimately have received under the special rules applicable to the restructuring of firms in difficulty in the agricultural sector.

(56) In order to comply with the third indent of recital 46 the measure must be intended for agricultural holdings which present guarantees of viability.

(57) The Portuguese authorities initially stated that, since this was a measure for the restructuring of bank loans, they had taken the view that the guarantee of viability had automatically already been verified by virtue of the analysis carried out by the banks prior to the granting of the loans.

(58) In accordance with its established practice the Commission considers that, as a rule, scrutiny by a financial institution prior to the granting of a consolidating loan cannot replace scrutiny with a view to verifying that a firm is economically viable within the

meaning of the abovementioned Community guidelines or of special rules applicable to the agricultural sector. The scrutiny carried out by the banks is aimed above all at verifying whether the financial situation of the firm is such as to suggest that the loan can be expected to be repaid normally. While this is of course essential to the economic viability of a firm, it is not sufficient for the purposes of guaranteeing the viability of a firm within the meaning of the Community guidelines or the special rules applicable to the agricultural sector.

(59) The Commission does, however, recognise the practical difficulties associated with assessing the long-term economic viability of agricultural holdings. Under the circumstances, financial viability may constitute a good indicator of economic viability. Similarly it may reasonably be felt that only a limited number of financially viable holdings will not also be economically viable.

(60) By virtue of this third criterion the Commission must, in its scrutiny, also take into consideration the origins of the financial difficulties faced by firms. Aid to firms which, although viable, are in difficulty cannot be regarded as compatible with the common market unless their financial difficulties stem from factors that are external to them and not from factors that are inherent in their internal management.

(61) Information supplied by the Portuguese authorities suggests that the origin of the difficulties faced by agricultural holdings relates mainly to external factors, in particular: the fact that customs barriers were abolished earlier than required under the Act of Accession of Portugal; the high interest rates applicable to the agricultural sector; and the high prices of raw materials as a result of the 1993 drought. That information suggests that in most cases the economic difficulties stem from factors that are external to the firms.

(62) The Commission is accordingly in a position to draw the conclusion that the measure under consideration complies with the criterion, relating to the viability of the recipient firms, set out in the third indent of recital 46.

(63) To conclude, the Commission takes the view that the credit line for reducing the debt burden of intensive stock farms does not satisfy the special rules applicable to the restructuring of firms in difficulty in the agricultural sector in cases where the aggregate grant equivalent of the investment aid received and the credit line exceeded the maximum amounts which the recipients could legitimately have received on the basis of the special rules applicable to the restructuring of firms in difficulty in the agricultural sector.

**Credit line for assisting recovery in the pig-farming sector**

(64) Since it is a measure aimed at helping producers to acquire pig-farming inputs (in particular feedingstuffs and other operating costs), this credit line must be regarded as a short-term ('seasonal') loan.

(65) At the time of the granting of the aid the Commission's policy consisted in not objecting to State aid granted in the form of subsidised short-term loans to the agricultural sector ('operating loans'), provided their duration did not exceed one year and, in addition, the loan was not restricted to a single product or a single operation. Within the limit of eligible expenditure the practice does not impose limits on the intensity of the aid, nor does it, at the level of individual recipients, prevent the subsidised loan from being renewed on an annual basis.

(66) In 1996 the Commission adopted a communication on State aids involving subsidised loans in the agriculture sector (*crédits de gestion*) ([17]). On 18 June 1997 the Commission decided to suspend its application owing to practical difficulties which had arisen in the course of its implementation.

(67) A practical consequence of that suspension was the fact that the Commission's previous policy in that respect had again become applicable. Accordingly, on 2 October 1997, when proceedings were initiated under Article 88(2), the rules in force were those described at recital 65. By subsequent decision of the Commission the Community guidelines were again applicable from 30 June 1998.

(68) The aid granted via the credit line concerned, which consists of an interest-rate subsidy for bank transactions relating to subsidised short-term loans (with a net grant equivalent of 3,1 %) does not, in accordance with the established policy of the Commission, satisfy the requirements for being regarded as compatible with the common market, since the period covered by the interest-rate subsidy (four years) is well in excess of the maximum period authorised in such cases (one year).

(69) In the absence of any other legal basis on which the credit line might be authorised it must be regarded as operating aid at odds with the Commission's established policy on State aids (Judgment of the Court of First

([17]) OJ C 44, 16.2.1996, p. 2.

Instance of 8 June 1995 in Case T-459/93 *Siemens* v *Commission* ([18])). Since this is a type of State aid which, by its very nature, is not intended to promote durable development of the sector or region concerned, the direct consequence of such a measure is the improvement of the conditions of production of the products in question in relation to other operators in the same sector in the European Union who do not receive comparable aid.

**Conclusion**

(70) As regards the derogations under Article 87(3)(a) and (c) in the case of aid to promote or facilitate the development of certain economic activities or of certain economic areas the Commission concludes, on the basis of the abovementioned scrutiny and in the light of the Community rules applicable, that the aid in question is likely to have an adverse effect on trading conditions to an extent contrary to the common interest.

(71) Consideration must also be given to the fact that the aids concern products covered by a common organisation of the market and that there are limits on the powers of Member States to intervene in the operation of those market organisations, this being a matter falling solely within the competence of the Community. By virtue of a well-established precedent of the Court of Justice of the European Communities (see in particular the judgment of 26 June 1979 in Case 177/78 *Pigs and Bacon* ([19])), common organisations of the market must be regarded as comprehensive and exhaustive systems which preclude any measures by Member States which could derogate from them or adversely affect them.

(72) The aids in question must therefore be regarded as infringing Community rules and do not qualify under any of the derogations provided for in Article 87(3).

VII

***Conclusions***

(73) Since the aids which are the subject of this Decision were not notified to the Commission in accordance with Article 88(3) of the Treaty, they were granted unlawfully, in other words without waiting for the Commission to decide on their compatibility with the common market.

(74) Furthermore, for the reasons set out above, they are incompatible with the common market in that they fall within the scope of Article 87(1) of the Treaty and cannot benefit from any of the derogations specified in paragraphs 2 and 3 of that Article.

(75) In the event of incompatibility of aid with the common market, the Commission must exercise its power recognised in the judgment of the Court of Justice of 12 July 1973 in Case 70/72 *Commission* v *Federal Republic of Germany* ([20]) and confirmed by the judgments of 24 February 1987 in Case 310/85 *Deufil* v *Commission* ([21]) and of 20 September 1990 in case C-5/89 *Commission* v *Federal Republic of Germany* ([22]) and order the Member State to recover from the beneficiaries any aid unlawfully paid. Recovery is also mandatory under Article 14(1) of Council Regulation (EC) No 659/1999 of 2 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ([23]). Recovery is necessary to restore the previously existing situation, and to eliminate the financial benefits the recipients of the unlawfully paid aid were able to enjoy unduly from the date on which the aid itself was paid.

(76) In the case of the credit line for reducing the debt burden of firms in the intensive stock-farming sector, taking into account the fact that the measure could perhaps have been regarded as compatible with the common market if the limits pursuant to the special rules for the restructuring of firms had been applied, reimbursement must concern the 13% of cases where the limits were exceeded in farming areas other than less-favoured farming areas.

(77) In the case of the credit line for assisting recovery in the pig-farming sector the aid granted must be recovered in its entirety.

(78) The aid must be repaid in accordance with the procedures of Portuguese law. The amount to be recovered must include interest payable from the granting of the aid until repayment actually takes place. The interest must be calculated on the basis of the market rate, with reference to the rate used for calculating the grant equivalent for regional aid ([24]).

([18]) [1995] ECR II-1675.
([19]) [1979] ECR 2161.
([20]) [1973] ECR 813.
([21]) [1987] ECR 901.
([22]) [1990] ECR I-3437.
([23]) OJ L 83, 27.3.1999, p. 1.
([24]) See footnote 14.

(79) This Decision is without prejudice to any consequences which the Commission may draw as regards the financing of the common agricultural policy by the European Agricultural Guidance and Guarantee Fund (EAGGF),

HAS ADOPTED THIS DECISION:

*Article 1*

1. The credit line which, under Chapter I of Decree-Law No 146/94 of 24 May 1994, is available for reducing the debt burden of intensive stock farms is incompatible with the common market in the cases where, together with the investment aid received, the grant equivalent exceeds 35% in farming areas other than less-favoured farming areas.

2. The credit line which is provided for in Chapter II of Decree-Law No 146/94 of 24 May 1994 for assisting recovery in the pig-farming sector is incompatible with the common market.

*Article 2*

Portugal shall cancel the aid schemes referred to in Article 1.

*Article 3*

1. Portugal shall take all the necessary measures to recover from the recipients the aids referred to in Article 1 which have already been granted unlawfully.

2. Recovery shall be effected in accordance with the procedures of national law. The amount to be recovered shall include interest from the date on which the aid was made available to the recipients until the date of its recovery. Interest shall be calculated on the basis of the reference rate used for calculating the grant equivalent of regional aid.

*Article 4*

Portugal shall inform the Commission, within two months of notification of this Decision, of the measures taken to comply with it.

*Article 5*

This Decision is addressed to the Portuguese Republic.

Done at Brussels, 25 November 1999.

*For the Commission*

Franz FISCHLER

*Member of the Commission*